

REMARKS/ARGUMENTS

Reconsideration of the above-identified application is respectfully requested.

In the Office Action dated March 9, 2007, drawings are objected to because the "strip" structure as claimed in claims 7-8 are not shown in the drawings.

This objection was in fact due to an inadvertent mistake in claiming the wrong dependency in claim 7. However, due to unrelated reasons, claims 7-8 have been cancelled and therefore this issue is now moot.

Claims 1, 4 and 6 are rejected under 35 U.S.C. § 102 as being anticipated by Yoo (U.S. Patent No. 6,711,750). Claims 3, 5, 13, 14, 16, 17, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoo in view of Kramer (U.S. Patent Publication No. 2003/0074020). Claims 1, 3-6, 13, 14, 16, 17, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kramer in view of Yoo. Claims 7-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kramer in view of Yoo, and further in view of Ioan (U.S. Patent No. 5,792,174). Finally, claims 1, 3-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ioan in view of Kramer.

In response to the rejections, Applicant has amended claims 1, 10-13, 15-16, and 18-20, and cancelled 6-9. Additionally, claims 21-24 are added. Claims 10-12 are amended to change the claims to independent claims. Claims 1, 13, 16, and 19 are amended to add the limitations of 7, 10-12 to the claims. Claims 21-24 further limit the acupuncture device of claims 1, 13, 16, and 19 to an insomnia device. No new matter has been introduced.

Applicant respectfully submits that the amendments of the claims have obviated the rejections for the reasons set forth below:

Claim Rejections -- 35 U.S.C. § 102

Claims 1, 4 and 6 are rejected under 35 U.S.C. § 102(e) as being anticipated by Yoo.

Yoo teaches an elastic textile belt for acupressure for securing the belt around the waist of a user.

In response to the rejections over Yoo, Applicant added the limitation of claim 7, which limits the supporting member to a cap, to claim 1. Because Yoo fails to teach or suggest that its waist belt can be a cap to be used as an acupressure device in a human head, Applicant's claimed invention is not anticipated by Yoo.

Claim Rejection -- 35 U.S.C. § 103(a)

Claims 3, 5, 13, 14, 16, 17 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoo in view of Kramer.

The Examiner alleges that "Yoo discloses the invention as claimed with the exception of the specific type of metal and the projections being placed on both the Baihui point and another acupressure point. Kramer discloses the type of metal on acupressure projections and also discloses that it was known to attach multiple acupressure projections on a single backing substrate in order to press against multiple acupressure points in the same basic location." *See* Office Action at 4. The examiner also contends that "the spacing between the projections of Yoo would inherently allow one point to be placed on the Baihui point and one of the other projections on one of the other claimed acupressure points, based on their relative locations on the human body." *Id.* at 5.

In response to these rejections, Applicant has added the limitation of claim 7 to claims 1, 13, 16, and 19, to claim that the supporting member of Applicant's claimed supporting member is a cap. In addition, Applicant has added the limitation that the location of the treatment zone on the human head in claim 13 is shown in Figure 2; the location of the treatment zone on the human head in claim 16 is shown in Figure 3; and the location of the treatment zone on the human head in claim 16 is shown in Figure 4, to further clarify the location of the metal

members in the inner side of the cap. Claims 3 and 5 are dependent claims of claim 1. Claims 14 is the dependent claim of claim 13, and claim 17 is the dependent claim of claim 16.

To establish a *prima facie* case of obviousness, the Examiner is responsible for showing that the prior art reference (or references when combined) teaches or suggests all of the claim limitations. *See MPEP* § 2143.

Because neither Yoo nor Kramer teaches that the acupressure device is a cap containing metal members in the inner side of the cap, and that the metal members are located in the inner side of the cap at the center portion of the head, not in anyway close to the ears, claims 3,5, 13,14, 16, 17, and 19 are not obvious over Yoo in view of Kramer.

Claim Rejections -- 35 U.S.C. § 103(a)

Claims 1, 3-6, 13, 14, 16, 17 and 19 are rejected under 35 U.S.C. § 103(a) over Kramer in view of Yoo.

The Examiner alleges that “Kramer discloses an elastic backing and metallic nubbins for placing on acupressure points on different locations of the body, including the scalp. The backing is formed into the appropriate shape depending on the location of the body it is to be placed. See Paragraph 10. Also disclosed is the use of such a device to treat insomnia.” *See* Office Action at 5.

The Examiner further avers that “Yoo discloses a strap with metal nubs thereon to perform acupressure on points closely located together.”

The Examiner is wrong about the teachings in Kramer. The acupressure device taught by Kramer, as shown in the drawings and the disclosure throughout the entire application, is a base sheet used in either ears or palms, not on the scalp per se. Particularly, the only excerpt in Kramer which describes the treatment of insomnia is in connection with Figure 27B, which is a base sheet used on “human ear,” not “scalp.” *See* Paragraph 82 of Kramer. As shown in

Applicant's Figures 1-4, none of the acupoints claimed in the present invention is close to or in the vicinity of the ears. In fact, Applicant's claimed a "cap" which does not need to cover the ears to have the insomnia, stress, or anxiety relieved effects.

More importantly, as set forth above, the amended claims 1, 13, 16, and 19 are limited to a cap as the acupressure device and neither Kramer nor Yoo teaches or suggests a cap as the acupressure device. Therefore, Applicant's claimed invention is not obvious over kramer in view of Yoo.

Claim Rejections -- 35 U.S.C. § 103(a)

Claims 7-9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kramer in view of Yoo and further in view of Ioan.

Because claims 7-9 are cancelled, this issue is moot.

Claim Rejections -- 35 U.S.C. § 103(a)

Claims 1, 3-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ioan in view of Kramer.

The Examiner alleges that "Ioan discloses a cap with hard nubs for applying pressure to points on the scalp. However, the nubs are not metallic." *See* Office Action at 6.

The Examiner further alleges that "Kramer discloses metallic acupressure applying nubs. Thus, it would have been obvious to have used metal for the nubs of Ioan, as the only requirement for the nubs is that it be a hard material." *Id.*

Finally, the Examiner avers that "the applicant has detailed that the Baihui is well known and as a pressure point on the scalp, it would have been obvious to apply pressure thereto for treating different maladies. The application of pressure on this point will inherently treat insomnia." *Id.*

In response to the rejections, Applicant, in addition to the limitation of the original claim 7, which limits the acupressure device to a cap, further limits the acupressure device in claims 13, 16, and 19 to the treatment zone depicted in Figures 2-4, respectively, to clarify the locations of the metal members on the human head. Furthermore, Applicant limits claims 1, 10-13, 16, and 19 to an insomnia reliever, a stress/tension reliever, or an anxiety/depression reliever.

The cap-like device taught in Ioan is a natural headache reliever which has a plurality of immobile protrusions in the inner membrane. The Examiner acknowledges that Ioan's immobile protrusions are non-metallic. As argued in the previous office action, one of the novelties of the present invention is the use of the metallic member to contact with an acupoint to increase the conductivity of the circulation. *See* Response to Office Action filed on November 20, 2006, which is herein incorporated by reference. Thus, Applicant's claimed invention is clearly not obvious over Ioan alone. Additionally, as set forth below, Ioan also fails to teach or suggest that the acupressure device can be used to treat insomnia, stress, or anxiety.

Insomnia is a sleep disorder characterized by an inability to sleep and/or inability to remain asleep for a reasonable period. Insomniacs typically complain of being unable to close their eyes or "rest their mind" for more than a few minutes at a time. Both organic and nonorganic insomnia constitute a sleep disorder. It can be caused by fear, stress, anxiety, medications, herbs, caffeine, depression, or bipolar disorder and sometimes occurs for no apparent reason. An overactive mind or physical pain may also be causes. *See* <http://en.wikipedia.org/wiki/Insomnia>.

In medical terms, stress is the disruption of homeostasis through physical or psychological stimuli. Stressful stimuli can be mental, physiological, anatomical or physical reactions. *See* [http://en.wikipedia.org/wiki/Stress_\(medicine\)](http://en.wikipedia.org/wiki/Stress_(medicine)).

Anxiety is an unpleasant state that involves a complex combination of emotions that include fear, apprehension, and worry. See <http://en.wikipedia.org/wiki/Anxiety>.

A headache (cephalalgia in medical terminology) is a condition of pain in the head; sometimes neck or upper back pain may also be interpreted as a headache. It ranks amongst the most common local pain complaints. See <http://en.wikipedia.org/wiki/Headache>.

The addition of Kramer does not supplement the deficiency of Ioan. As discussed above, Kramer teaches the application of small pieces of base sheets to either palms or ears. Each of the base sheets covers a very small area of the palm or the ear, which certainly is different from a cap which covers the entire head as claimed by the Applicant. The Examiner certainly has not fulfilled his burden of proving a *prima facie* case of obviousness regarding why a base sheet on the ear or palm can be used to combine with a cap-like device for headache reliever in order to render Applicant's claimed invention for an insomnia, stress, or anxiety device obvious, especially since none has taught the location of the metal members as demonstrated in Figures 2-4 of the claimed invention.

Also, the only acupressure device taught by Kramer to have insomnia treatment effect is a base sheet to be placed on the human ear. See paragraph 82. Kramer never teaches or suggest an acupressure device to be a stress/tension reliever or an anxiety/depression reliever. Thus, Kramer is either irrelevant or in fact "teaching away" from Applicant's invention, and cannot in any way be relied upon as "inherent" disclosure of Applicant's invention.

As shown in Figures 1-4 of the present invention, Applicant teaches the acupressure device containing metal members that are concentrated in the center of the head as shown in Figures 1-4 of the specification, clearly not in vicinity of the human ears.

Applicant further would like to remind the Examiner that claims 10-12 are "method of use" claims which certainly are not "intended use." In fact, a new use of even a known process,

machine, manufacture, or composition of matter, or an improvement thereof is patentable under 35 U.S.C. § 101, where the inherency argument does not apply. Therefore, even if the Examiner's argument on "inherency" has merits, which Applicant does not agree, claims 10-12, which are "method of use" claims, should still be patentable over Ioan in view of Kramer.

Finally, regarding the Examiner's argument that "Baihui point is well known and as a pressure point on the scalp, it would have been obvious to apply pressure thereto for treating different maladies," Applicant would like to remind the Examiner that even if a prima facie case of obviousness is established, Applicant can refute the obviousness argument by showing secondary consideration, such as "long felt need. *See Graham v. John Deere Co.*, 383 U.S. 1 (1966).

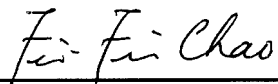
At this time, the Examiner has not been able to demonstrate any evidence that the application of pressure on Baihui point can treat insomnia. That is because despite the discovery of Baihui point for over a thousand years, no one has ever been able to connect the pressuring of the Baihui point to a cure of insomnia and certainly there has been no cap sold in the marketplace which can relieve the insomnia, stress or anxiety symptoms except Applicant's claimed invention. This demonstrates that Applicant is not obvious over prior art of records.

In view of the foregoing, Applicant respectfully request that the application be in condition for allowance. Should there be any questions regarding this application, the examiner is requested to contact the applicant's attorney to resolve the problem.

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